

Assembly Bill No. 202

Passed the Assembly September 6, 2011

Chief Clerk of the Assembly

Passed the Senate September 1, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17557, 17557.1, and 17560 of, and to add Sections 17518.83, 17562.1, and 17562.5 to, the Government Code, relating to local educational agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 202, Brownley. Local educational agencies: reimbursable state mandates.

Existing law establishes a procedure for local governmental agencies to file, with the Commission on State Mandates, claims for reimbursement of specified costs associated with state-mandated local programs, and sets forth the procedure for a determination by the commission for eligibility for reimbursement, appropriation, and payment of claims, including payment pursuant to the enactment of a local government claims bill, the establishment of interest accrued on claims, and the review of state mandates by the Legislative Analyst generally.

This bill would express the intent of the Legislature that statutes creating a reimbursable state mandate on local educational agencies be periodically reviewed, and that the Legislature consider recommendations on whether those statutes should be amended, repealed, or remain unchanged. The bill would require that, in addition to a report submitted pursuant to existing law, the Legislative Analyst review and report on each reimbursable state mandate relating to local educational agencies that meets prescribed criteria. The bill would specify the information to be provided in the review and report, and would require that the review and report be provided to the chairpersons of the Assembly Committee on Education, the Senate Committee on Education, and the fiscal committees of the Assembly and the Senate, on or before the January 1 following the adjournment of the regular session of the Legislature for which the review was made. The bill would define a local educational agency for the purposes of those provisions.

This bill would authorize a successful test claimant that is a local educational agency to designate another local educational agency to prepare and submit the proposed reimbursement parameters and guidelines to the commission, as specified. The bill would modify

provisions governing the development of a draft reasonable reimbursement methodology and would provide for binding arbitration in the case of an impasse, as specified. The bill would enact other related provisions.

Existing law requires the Controller to submit various reports to the Legislature and the Department of Finance on each state mandate, including the total amount of claims paid per fiscal year, whether there are mandate deficiencies or surpluses, and a comparison of the estimated annual cost of each mandate in the preceding fiscal year to the amount determined to be payable by the state for that fiscal year.

This bill would require the Controller to notify the appropriate fiscal and education policy committees of the Legislature within 30 days of the date upon which the Controller determines that the total claims for reimbursement filed in a fiscal year, on any mandate where the test claim was filed by a local educational agency, exceed the adopted statewide estimate of costs for that mandate by more than 25%. The bill would also require the Commission on State Mandates to notify the above-referenced committees within 30 days of the date upon which a test claim is filed by a local educational agency, where that agency submits a written narrative that identifies certain information regarding a regulation alleged to contain a mandate.

The people of the State of California do enact as follows:

SECTION 1. Section 17518.83 is added to the Government Code, to read:

17518.83. “Local educational agency” means a school district as defined in Section 17519, except that it does not include a community college district.

SEC. 2. Section 17557 of the Government Code is amended to read:

17557. (a) (1) If the commission determines there are costs mandated by the state pursuant to Section 17551, it shall determine the amount to be subvented to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order. Except as provided in paragraph (2), the successful test claimants shall submit proposed parameters and

guidelines within 30 days of adoption of a statement of decision on a test claim. The proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program. At the request of a successful test claimant, the commission may provide for one or more extensions of this 30-day period at any time prior to its adoption of the parameters and guidelines. If proposed parameters and guidelines are not submitted within the 30-day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first 12 months of incurred costs will be reduced by 20 percent, unless the test claimant can demonstrate to the commission why an extension of the 30-day period is justified.

(2) If the successful test claimant is a local educational agency, the test claimant may designate another local educational agency to prepare and submit the proposed parameters and guidelines to the commission. A designation made pursuant to this paragraph shall be made in writing and submitted to the commission.

(b) In adopting parameters and guidelines, the commission may adopt a reasonable reimbursement methodology.

(c) The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred. However, the commission may not specify in the parameters and guidelines any fiscal year for which payment could be provided in the annual Budget Act.

(d) (1) A local agency, school district, or the state may file a written request with the commission to amend the parameters or guidelines. The commission may, after public notice and hearing, amend the parameters and guidelines. A parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year.

(2) For purposes of this subdivision, the request to amend parameters and guidelines may be filed to make any of the following changes to parameters and guidelines, consistent with the statement of decision:

(A) Delete any reimbursable activity that has been repealed by statute or executive order after the adoption of the original or last amended parameters and guidelines.

(B) Update offsetting revenues and offsetting savings that apply to the mandated program and do not require a new legal finding that there are no costs mandated by the state pursuant to subdivision (e) of Section 17556.

(C) Include a reasonable reimbursement methodology for all or some of the reimbursable activities.

(D) Clarify what constitutes reimbursable activities.

(E) Add new reimbursable activities that are reasonably necessary for the performance of the state-mandated program.

(F) Define what activities are not reimbursable.

(G) Consolidate the parameters and guidelines for two or more programs.

(H) Amend the boilerplate language. For purposes of this section, “boilerplate language” means the language in the parameters and guidelines that is not unique to the state-mandated program that is the subject of the parameters and guidelines.

(e) A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim.

(f) In adopting parameters and guidelines, the commission shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity.

SEC. 3. Section 17557.1 of the Government Code is amended to read:

17557.1. (a) Notwithstanding any other provision of this part, within 30 days of the commission’s adoption of a statement of decision on a test claim, the test claimant, or a local educational

agency designated pursuant to subdivision (a) of Section 17557, and the Department of Finance may notify the executive director of the commission in writing of their intent to follow the process described in this section to develop a reasonable reimbursement methodology and statewide estimate of costs for the initial claiming period and budget year for reimbursement of costs mandated by the state in accordance with the statement of decision. The letter of intent shall include the date on which the test claimant and the Department of Finance will submit a plan to ensure that costs from a representative sample of eligible local agency or school district claimants are considered in the development of a reasonable reimbursement methodology.

(b) This plan shall also include all of the following information:

(1) The date on which the test claimant and Department of Finance will provide to the executive director an informational update regarding their progress in developing the reasonable reimbursement methodology.

(2) The date on which the test claimant and Department of Finance will submit to the executive director the draft reasonable reimbursement methodology and proposed statewide estimate of costs for the initial claiming period and budget year. This date shall be no later than 180 days after the date the letter of intent is sent by the test claimant and Department of Finance to the executive director.

(c) (1) At the request of a test claimant that is not a local educational agency and Department of Finance, the executive director may provide for up to four extensions of this 180-day period.

(2) At the request of a local educational agency test claimant, or a local educational agency designated pursuant to subdivision (a) of Section 17557, and the Department of Finance, the executive director may provide for a single extension of this 180-day period, not to exceed another 90 days.

(d) A test claimant that is not a local educational agency or Department of Finance may notify the executive director at any time that the claimant or Department of Finance no longer intends to develop a reasonable reimbursement methodology pursuant to this section. In this case, paragraph (2) of subdivision (a) of Section 17553 and Section 17557 shall apply to the test claim. Upon receipt of this notification, the executive director shall notify the test

claimant of the duty to submit proposed parameters and guidelines within 30 days under subdivision (a) of Section 17557.

(e) A local educational agency test claimant, or a local educational agency designated pursuant to subdivision (a) of Section 17557, and Department of Finance may jointly notify the executive director at any time that the local educational agency and Department of Finance no longer intend to develop a reasonable reimbursement methodology pursuant to this section. In this case, paragraph (2) of subdivision (a) of Section 17553 and Section 17557 shall apply to the test claim. Upon receipt of this notification, the executive director shall notify the test claimant, or its designee, of the duty to submit proposed parameters and guidelines within 30 days under subdivision (a) of Section 17557.

(f) If the draft reasonable reimbursement methodology and proposed statewide estimate of costs, developed pursuant to this section, for a test claim filed by a local educational agency is not submitted to the executive director prior to the date specified pursuant to paragraph (2) of subdivision (b) or by the end of any extension period provided pursuant to paragraph (2) of subdivision (c), or if the test claimant, the local educational agency designated pursuant to subdivision (a) of Section 17557, and the Department of Finance notify the executive director that no further progress in developing the reasonable reimbursement methodology is possible, then all of the following shall be implemented:

(1) The executive director shall do the following:

(A) Immediately declare that the development of the reasonable reimbursement methodology is at an impasse, and that binding arbitration is necessary.

(B) Notify the Chief Executive Officer of the Fiscal Crisis and Management Assistance Team established pursuant to Section 42127.8 or his or her designee, the test claimant, any local educational agency designated pursuant to subdivision (a) of Section 17557, and the Department of Finance of the declaration made pursuant to subparagraph (A).

(2) The Chief Executive Officer of the Fiscal Crisis and Management Assistance Team or his or her designee shall do the following:

(A) Serve as the sole arbitrator of the reasonable reimbursement methodology impasse.

(B) Within 90 days of receiving the notification pursuant to subparagraph (B) of paragraph (1), mediate or, if necessary, arbitrate a draft reasonable reimbursement methodology that is consistent with subdivisions (a) to (d), inclusive, of Section 17518.5, and provide that draft jointly to the test claimant, any local educational agency designated pursuant to subdivision (a) of Section 17557, and the Department of Finance.

(C) Be deemed to be “an interested party” for the purposes of subdivision (e) of Section 17518.5.

(3) The local educational agency and the Department of Finance shall do the following:

(A) Within 10 days of receiving the notification pursuant to subparagraph (B) of paragraph (1), provide all available support materials, including, but not limited to, estimates, local cost projections, sample information, and input from associations or other interested parties, to the arbitrator.

(B) Upon receipt of the draft reasonable reimbursement methodology developed pursuant to paragraph (2), develop a proposed statewide estimate of costs for the initial claiming period and budget year.

(C) Within 30 days of receiving the draft reasonable reimbursement methodology from the arbitrator pursuant to subparagraph (B) of paragraph (2), jointly submit to the executive director the draft reasonable reimbursement methodology and proposed statewide estimate of costs for the initial claiming period and budget year.

SEC. 4. Section 17560 of the Government Code is amended to read:

17560. Reimbursement for state-mandated costs may be claimed as follows:

(a) A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

(b) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of Section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

(c) A local educational agency filing a reimbursement claim, where reimbursements for that claim are based upon a reasonable reimbursement methodology developed pursuant to Section 17557.1 and approved pursuant to Section 17557.2, shall provide with the reimbursement claim a signed certification from the superintendent attesting to the accuracy of the data used to calculate the amount claimed under the approved reasonable reimbursement methodology.

SEC. 5. Section 17562.1 is added to the Government Code, to read:

17562.1. (a) The Controller shall, consistent with the legislative intent specified in subdivision (a) of Section 17562, notify the appropriate fiscal committees and educational policy committees in each house of the Legislature within 30 days of the date upon which the Controller determines that the total claims for reimbursement filed in a fiscal year, on any mandate where the test claim was filed by a local educational agency, exceed the adopted statewide estimate of costs for that mandate by more than 25 percent.

(b) The commission shall, consistent with the legislative intent specified in subdivision (a) of Section 17562, notify the appropriate fiscal committees and educational policy committees in each house of the Legislature within 30 days of the date upon which a test claim is filed by a local educational agency, where that local educational agency submits a written narrative that identifies the effective date and register number of any regulation alleged to contain a mandate.

SEC. 6. Section 17562.5 is added to the Government Code, to read:

17562.5. (a) It is the intent of the Legislature that statutes creating a reimbursable state mandate on local educational agencies be periodically reviewed, and that the Legislature consider recommendations on whether those statutes should be amended, repealed, or remain unchanged.

(b) In addition to the report submitted pursuant to subdivision (c) of Section 17562, at least once in each regular session of the Legislature, the Legislative Analyst shall review and report on each reimbursable state mandate relating to local educational agencies that meets each of the following criteria:

(1) Pursuant to Section 17551, the Commission on State Mandates has determined the existence of a reimbursable state-mandated program.

(2) A claim for reimbursement has been filed with the Controller by a school district, county office of education, or other eligible local educational agency.

(3) The Legislature has not provided an appropriation to fully fund current and pending claims for reimbursement filed with the Controller.

(c) The review and report prepared by the Legislative Analyst pursuant to subdivision (b) shall:

(1) Include all of the following for each mandate:

(A) A summary and its statutory source.

(B) Fiscal information, including, but not necessarily limited to, the claims paid to date, unpaid claims, pending claims, and the history of appropriations for the mandate.

(C) Recommendations as to whether the mandate should be amended, repealed, or remain unchanged.

(2) Be provided to the chairpersons of the Assembly Committee on Education, the Senate Committee on Education, and the fiscal committees of the Assembly and the Senate, on or before the January 1 following the adjournment of the regular session of the Legislature for which the review was made.

Approved _____, 2011

Governor